

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2019

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP NPD No.108 of 2013
and M.P.No.1 of 2013

1.Arulselvam
2. Vinnarasi

... Petitioners/Appellants

Vs.

1. T.A.Jayaseeli

... Decree holder/respondent

2. K.Sellappan

... Auction Purchaser

3. Jayaseeli

... Respondents/Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code against the fair and decretal order dated 23.07.2012 in C.M.A.No.42 of 2011 in REA No.173 of 2017 in REA No.36 of 2006 in REP No.14 of 1999 in O.S.No.107 of 1986 on the file for the Principal District Judge, Salem.

For Petitioners : Mr. T.R.Rajaraman

For Respondents : Mr.P.Mani for R2

No appearance for R3

ORDER

Aggrieved over the order of the trial Court against the dismissal of

the application to restore the application filed under Section 21 Rule 58, the

<http://www.judis.nic.in>

present revision is filed.

2. The brief facts leading to file this revision is as follows:

The petitioners are entitled to 2/3rd share in the property mentioned in the Execution petition. Hence, they filed O.S.No.150/2004 on the file of District Munsif, Mettur and the same is pending. In order to defeat the right of the petitioners, the Judgment Debtor in collusion with the decree holder had purchased the property in Court auction held on 19.01.2006. Hence, the petitioners filed a petition stating that the said purchase is not valid. The said petition was posted on 16.07.2007. On that day, the petitioners were not appeared before the Court due to illness of the 1st petitioner. After recovering from illness, when the 1st petitioner met his counsel, he stated that the petition was dismissed for default on 16.07.2007. On that day, since the advocates were on boycott, the counsel for the petitioners was also not able to attend the Court on behalf of them. The non appearance of the petitioners on that day is neither wilful nor wanton. The very next day, an application has been filed to restore the above application on the ground that on the date of dismissal, the advocate has boycotted the Court. Hence, the petition was dismissed for default. Further, in the affidavit it is also stated that the petitioner was sick on the day when the advocate were boycotted the Court. Therefore, he could not present before the Court. However, the trial Court dismissed the above application on the ground that no medical certificate is produced. The First appellate Court has also confirmed the same, against which, the present revision is filed.

3. The learned counsel for the revision petitioners submitted that admittedly, there was a primary decree passed in favour of the petitioners and further, the decree holder himself has received the entire decree amount and full satisfaction memo has also filed before the Court. The Court below has non-suited the revision petitioners on technical grounds, whereas, it is the contention of the learned counsel for the respondents that the petition is not maintainable since the sale is confirmed and auction purchaser has filed a fresh execution petition for delivery of possession. Hence, prays for dismissal of the revision petition.

4. I have perused the orders of the Court below.

5. No doubt, execution proceedings were terminated during pendency of this revision. I am of the view that the same is not a reason to dismiss the revision for a simple reason that the property is a agricultural land. The suit was decreed for the amount below Rs.1,00,000/- and the decree holder also appears to have received the entire decree amount, certified copies also filed before this Court. Admittedly, the petitioners share declared through preliminary decree. Further, there is no materials available to show procedure under Order 21 Rule 64 of C.P.C, it has been properly followed while bringing the property for auction and an extent of 8.40 acres have been brought into sale and sold in execution of the money decree which is below Rs.1,00,000/-.

Provision of Order 21 Rule 64 of C.P.C., has not been properly followed by the trial Court. Admittedly, the right of the revision petitioners have been

crystallised in a partition suit. That being the position, the trial Court ought to have entertained the application and adjudicated the rights of the parties. They need not be directed to file any separate suit. Therefore, when there is no delay in filing the application, the application filed to restore the application which was dismissed due to Advocate's boycott, I am of the view that when an application was taken before the Court that there was a delay due to some health condition, the Court ought to have given liberal approach, keeping in mind the substantial rights of the parties.

6. Accordingly, the Civil Revision Petition is allowed. The order of the trial Court is set aside. The trial Court shall first decide the rights of the parties under Order 21 Rule 58 of C.P.C. Thereafter, pass any order in the subsequent execution proceedings which is filed for delivery of possession. It is made clear that till the decision is made in the claim application, delivery need not be ordered and such exercise shall be completed within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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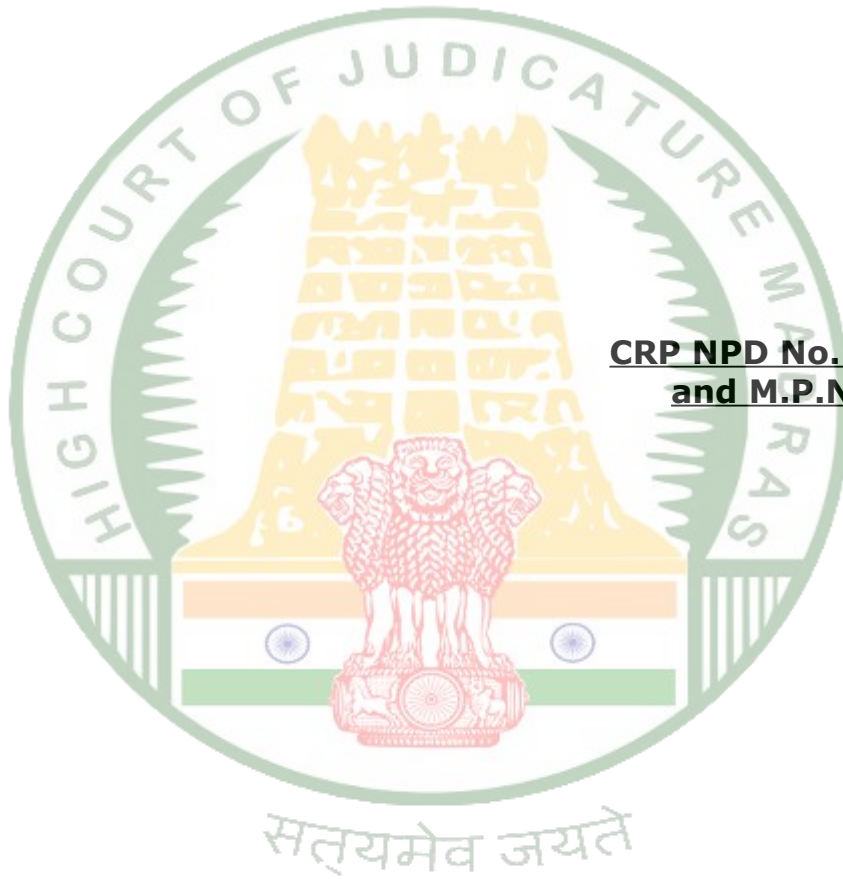
Index:Yes/No

Internet:Yes/No

Speaking order: Non-speaking order

N.SATHISH KUMAR, J.

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